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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/825,907	04/04/2001	Peter Zatloukal	41003.P036	3711

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SCHWABE, WILLIAMSON & WYATT, P.C.
PACWEST CENTER, SUITE 1900
1211 SW FIFTH AVENUE
PORTLAND, OR 97204

EXAMINER

ALAM, UZMA

ART UNIT PAPER NUMBER

2157

DATE MAILED: 11/02/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

09/825,907

Applicant(s)

ZATLOUKAL ET AL.

Examiner

Uzma Alam

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☐ Responsive to communication(s) filed on 11 August 2005.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-3, 5-12 and 14-25 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-3, 5-12 and 14-25 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 14 April 2001 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____.
- 4) ☒ Interview Summary (PTO-413)
Paper No(s)/Mail Date. 10/24/05.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: _____.

DETAILED ACTION

This action is responsive to the request for continued examination filed on August 11, 2005. Claims 4 and 13 have been cancelled and claims 22-25 have been added. Claims 1, 3, 10, 12, 20 and 21 have been amended. Claims 1-3, 5-12, 14-25 are pending. The pending claims represent a method and apparatus for determining back off intervals for the accessing resources of a server.

Claim Rejections - 35 USC § 112

1. The following is a quotation of the first paragraph of 35 U.S.C. 112:

The specification shall contain a written description of the invention, and of the manner and process of making and using it, in such full, clear, concise, and exact terms as to enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the same and shall set forth the best mode contemplated by the inventor of carrying out his invention.

2. Claims 1-3, 5-12 and 14-25 are rejected under 35 U.S.C. 112, first paragraph, as failing to comply with the enablement requirement. The claim(s) contains subject matter which was not described in the specification in such a way as to enable one skilled in the art to which it pertains, or with which it is most nearly connected, to make and/or use the invention.

3. As per claims 1, 10, 20, 21 and 22, the new limitation “without regard to availability of the shared resource” is not explicitly stated in the specification. Applicant is request to point out support for this limitation in the specification.

4. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

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5. Claims 1-3, 5-12, 14- 25 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

6. As per claims 1, 10, 20 and 21, it is unclear if the client also determines the back off intervals.

7. As per claim 10, there is no antecedent basis for “the client” in line 4 of the claim.

8. As per claim 22, there is no antecedent basis for “the apparatus” in line 8 of the claim.

Also in claim 22, in line 7, the claim states that the processor is reattempting to access the shared resource, however, before this reattempt, there is no first attempt by the processor in the claim.

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

Claims 1-3, 5, 6, 10-12, 14, 15, 20 and 21-25 are rejected under 35 U.S.C. 102(e) as being anticipated by Liao et al. US Patent No. 6,717,915. Liao et al. discloses the invention as claimed including calculating a back-off time delay (see abstract).

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As per claims 1, 10, 20, 21, and 22, Liao discloses a method, system, apparatus and machine accessible medium having stored therein a plurality of programming instructions for facilitating a client comprising:

attempting by a client to access a shared resource (accessing a server from a client; column 3, lines 32-50; column 5, lines 26-33);

detecting by the client that the shared resource is unavailable (Liao discloses checking the network for traffic levels, if traffic levels are too high, a back off strategy is implemented, suggesting that the resource is unavailable; column 3, lines 45-50; column 4, lines 16-32; column 5, lines 34-41);

determining a first back off interval for the client to delay before reattempting to access the shared resource (determining a back off time; column 4, lines 19-32, lines 56-60; column 5, lines 43-46);

successfully accessing the shared resource by the client upon expiration of the first back off interval (column 5, lines 49-67); and

determining a second back off interval for the client to delay before reattempting to access the shared resource after said successful access without regard to availability of the shared resource (column 4, lines 59-67; column 6, lines 1-25, lines 64-67; column 7, lines 39-67; column 8, lines 1-11); and

one or more processors coupled to the storage medium to execute the programming instructions (column 3, lines 32-50)

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As per claims 2 and 11, Liao discloses the method and apparatus of claims 1 and 10, wherein said second back off interval is less in duration than said first back off interval (second delay time is less than the first delay time; column 6, lines 19-44).

As per claims 3, 12, and 23-25, Liao discloses the method, machine accessible medium, system, and apparatus of claims 2 and 11, further comprising:

successively determining additional back off intervals upon each successful access of the shared resource by the client, each of said successive back off intervals being less in duration than each previous back off interval (column 6, lines 19-44).

As per claims 4 and 13, Liao discloses the method and apparatus of claims 1 and 10, wherein said second back off interval is determined independent of whether the shared resource is available (column 4, line 19-32; column 8, lines 17-32).

As per claims 5 and 14, Liao discloses the method and apparatus of claims 1 and 10 wherein said attempting to access a shared resource comprises attempting to access a server device coupled to the client (a client server configuration; column 3, lines 32-50).

As per claims 6 and 15, Liao discloses the method and apparatus of claims 1 and 10, wherein said attempting to access a shared resource further comprises attempting to access a shared network (column 3, lines 32-51).

As per claims 8 and 17, Liao discloses the method and apparatus of claims 6 and 15 wherein said shared network comprises a wireless network (column 3, lines 32-50).

As per claim 19, Liao discloses the apparatus of claim 10 further comprising:
a counter to determine how many unsuccessful access attempts of the shared resource have been made by the client, wherein the counter value is not reset to zero upon the client successfully accessing the shared resource (column 7, lines 52-67; column 8, lines 1-16).

As per claim 21, Liao discloses in a client, a method comprising:
detecting that a shared resource is unavailable (column 3, lines 45-50; column 5, lines 34-41);

determining a first time period for the client to delay before attempting to access the shared resource (determining a back off time; column 4, lines 19-32, lines 56-60; column 5, lines 43-46);

upon expiration of the first time period, determining a new first time period for the client to delay before attempting to access the shared resource if the shared resource remains unavailable (column 5, lines 49-67), and

determining a second time period for the client to delay before reattempting to access the shared resource after the successful access of the shared resource by the client (column 4, lines 59-67; column 6, lines 1-25, lines 64-67; column 7, lines 39-67; column 8, lines 1-11).

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 7-9 and 16-18 are rejected under 35 U.S.C. 103(a) as being unpatentable over Liao et al. US Patent No. 6,717,915 in view of Mattaway et al US Patent No. 6,185,184. Mattaway discloses the invention substantially as claimed including a protocol for establishing real-time PPP (see abstract).

As per claims 7 and 16, Liao discloses the method and apparatus of claims 6 and 15. Liao does not disclose wherein said shared network further comprises an Ethernet network. Mattaway discloses an Ethernet network. See column 4, lines 35-45; column 17, lines 47-65. It would have been obvious to a person of ordinary skill in the art at the time of the invention to combine an Ethernet network of Mattaway with the network of Liao. A person of ordinary skill in the art would have been motivated to do this to provide a suitable transport for TCP/IP.

As per claims 9 and 18, Liao discloses the method and apparatus of claims 1 and 10. Liao does not disclose wherein said shared resource comprises a data bus. Mattaway discloses the shared resource comprises a data bus. See column 12, lines 62-67; column 13, lines 1-33. It would have been obvious to a person of ordinary skill in the art at the time of the invention to

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combine a data bus of Mattway with the shared resource of Liao. A person of ordinary skill in the art would have been motivated to do this establish real-time direct links.

Response to Arguments

Applicant's argues that the disclosure in Liao US Patent No. 6,717,915 does not teach the required operation of "determining a second back off interval for the client to delay reattempting to access the shared resource after successfully accessing the shared resource."

In response to applicant's arguments, examiner asserts that determining a second back off interval is taught by the cited portions of the reference where a new retransmission time values to be used the next time a response is not received. The determining a new retransmission time is determined after the resource is successfully accessed. This determining a new retransmission time reads on the claim language of determining a second back off interval after a successful access.

With the current claim language, it is possible to interpret the second back off interval, which is calculated after the second attempt to access the shared resource, as the same as the first attempt. In the first attempt, a back off interval is calculated when a there is an attempt by a client to access a shared resource. In the second attempt, a second back off interval is determined when there is an attempt to access the shared resource, without regard to the availability of the resource. There is nothing distinguishing the second attempt to access the shared resource from the first attempt to access the shared resource. There is also nothing distinguishing the second back off interval from the first back off interval.

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Conclusion

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Uzma Alam whose telephone number is (571) 272-3995. The examiner can normally be reached on Monday-Tuesday 9 AM - 5:30 PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Ario Etienne can be reached on (571) 272-4001. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

Uzma Alam
Ua
October 25, 2005


ARIO ETIENNE
SUPERVISORY PATENT EXAMINER
TECHNOLOGY CENTER 2100